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09/735,697	12/12/2000	Noel Lee	P1230	6750

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LARIVIERE, GRUBMAN & PAYNE, LLP  
19 UPPER RAGSDALE DRIVE  
SUITE 200  
MONTEREY, CA 93940

EXAMINER

POLK, SHARON A

ART UNIT	PAPER NUMBER
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2836

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/735,697

Applicant(s)

LEE, NOEL

Examiner

Sharon Polk

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The finality of the office action, dated January 16, 2003 has been withdrawn in light of a new art rejection below. The after final amendment has been entered. There still remains a 35 U.S.C § 112, first paragraph rejection, a duplicate of claims objection, and response regarding the submitted declarations under 37 C.F.R. §§ 1.131(a) and 1.132.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 41-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There are two reasons why the examiner believes that the Applicant has added new matter to the claims.

The first reason is the Applicant describes ONLY two scenarios of the power distribution system neither of which suggest selective reassignment. The second reason is the figure drawings do not support the selective reassigning of the color-assignable areas.

The scenarios as clearly described by the Applicant are: I. a color-coded power strip by direct manufacturing (original specification (OS), 3:18-20), color coded AC outlet

portions . . . permanently provided at time of manufacturing with the colored portions (OS, 6:16-17); and II. a power strip which can be color-coded with by applying an appropriate colored label to the outlet portion (OS, 4:20-21) via a kit of a plurality of indicia elements for labeling a respective power strip AC outlet portion. . . (OS, 3:23-24).

In looking at scenario I, the examiner notes that Applicant specifically describes that each outlet portion is color different from the other outlets (OS, 3:14-14, 4:18-20, 5:23-26, 29-31, 6:15-17) and further specifically states a color coded power strip (OS 3:1-4, 3:27).

In looking at scenario II, the examiner notes that Applicant specifically describes a kit for labeling a respective power strip AC outlet portion. As disclosed by the Applicant, the kit is useful in retro-fitting after-market ac power strip product (OS, 3:25-26). The Applicant also describes the *method* of using the kit with indicia, and for *assigning* a particular color to a *peripheral device*, **THEN** applying the indicia to the power AC outlet portion (OS, 4:1-4).

The second reason as evidenced from the drawings is also noted. The examiner notes that the remarkable difference between figure 1, and figure 2, and figure 3, is the addition of the labels. Figure 2 clearly shows an established (direct market) color-coded power strip. Figure 3 clearly shows specific/ascertained colored labels (lc1-lcX) attached to the areas (C1-CX). Applicant specifically recites

Fig. 3 shows power strip 20N in accordance with the present invention having color coded AC outlet portions C1, C2, C3, C4, C5 and Cx permanently provided at the time of manufacturing with the colored portions, or after market, by applying an appropriate color labels (sic) or indicia lc1, lc2, lc3, lc4, lc5 and lcx to the outlet portions of an AC power strip **not**

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**provided with permanent color portions**, in accordance with the present invention (OS, 4:15-21). emphasis added.

In conclusion, the omission of the word reassigning, or fragment thereof, or a word (phrase) with a similar meaning, coupled with the **specific teaching away** from the new suggestion that an existing color-coded power strip can be selectively reassigned another color leads the examiner to find that new matter has been added.

Claims 41-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention as claimed calls for a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of the plurality of color-assignable areas to a correspondingly number of different ones of said plurality of peripheral devices. However, the specification does not describe how this is to be done. Is the reassignment done arbitrarily? Or is there a specific way to reassign colors? Are the attachable labels put over the existing **permanent color portions**? (scenario I), or are they put over the **appropriate color labels applied after market**? (scenario II), or are the appropriate color labels that are applied after market *removed* first, and then the new labels are applied?

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 41-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 41, 43, 45, and 47, it is unclear how the housing member, which has a plurality of outlets, the outlets themselves, and the plurality of peripherals EACH have a plurality of color-assignable areas. In other words, how can recited elements, i.e., the housing member, the outlets, and peripherals have more than one (claimed plurality) color-assignable area? Maybe Applicant intends for each recited element to have a color-assignable area, and not **each** recited elements to have a plurality of color-assignable areas.

With regard to claims 41, 43, 45, and 47, it is unclear how a solid color-coded AC electrical power distribution system can later be claimed to have "color-assignable areas" when it is previously recited that it is color coded. Has not the color already been assigned by being color-coded? Applicant is invited to direct the examiner to a location within the original specification and/or continuation of this application which discloses that areas that are color-coded can be assigned a new color. *Applicant has not responded to this question which was previously presented.*

### ***Claim Objections***

4. Claims 43, 45, 47 are objected to under 37 CFR 1.75 as being a substantial duplicate of claim 41. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in

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wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 41, 43, 45, 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Friesen, US 6,496,884**

With regard to claims 41, 43 45, and 47 as amended March 13, 2003, Friesen teaches a solid color-coded AC electrical power distribution system, said system comprising (Figs. 1, 4A):

a housing member having a plurality of electrical outlets (111-117) for connecting electrical power to a plurality of peripheral devices (4:11-12, 48-50),

said housing member having a plurality of color-assignable areas (4:40-42, 51-52),

each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices (4:36-38, 6:49-54); and

a plurality of attachable color-coded labels (6:41).

Friesen does not explicitly teach a plurality of attachable color-coded labels **as intended** by the Applicant (for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices). However it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). In this case, the function of the claimed apparatus is structurally met by Friesen. The reassignment, relabeling, and/or redefining the color associated with each recited elements does not change the function of the system in any way. The labels are used as an indicia-oriented apparatus. A red label is structurally the same as a green label. Placing a green label over an area previously established red label area (the area being a receptacle, for example) does not change the function of either the receptacle or the label.

Despite the fact that the examiner has found new matter, and a recitation involving intended use, which is met by the teachings of Friesen, the examiner puts forth an art rejection teaching that it is known to relabel devices arbitrarily.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friesen, US 6,496,884 in combination with Brooks, M.W., How To Relabel or Rearrange Keycaps.**

With regard to claims 41, 43 45, and 47 as amended March 13, 2003, Friesen teaches a solid color-coded AC electrical power distribution system, said system comprising (Figs. 1, 4A):

a housing member having a plurality of electrical outlets (111-117) for connecting electrical power to a plurality of peripheral devices (4:11-13, 48-50),

said housing member having a plurality of color-assignable areas (4:40-42, 51-52),

each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices (4:36-38, 6:49-54); and

a plurality of attachable color-coded labels (6:41).

Friesen does not explicitly teach a plurality of attachable color-coded labels as claimed by the Applicant (for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices). However, Brooks teaches that it is known to relabel a device if you want to change the existing layout. One of ordinary skill in the art at the time the invention was made would have been motivated to relabel Friesen's ports with

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the suggestion and teaching of Brooks for the purpose of rearranging an existing pattern by yourself (Brooks, ¶ 1).

With regard to claims 42, 44, 46, and 48, adding the feature of the colored labels further including indicia for identifying which peripheral has been assigned a new color. Friesen teaches one or more adhesive strips each also have a commonly used icon for identifying the peripheral device whose plug is designed to connect with the external port adjacent to which the adhesive strip has been attached (abstract).

**Claims 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee, US 5,589,718 in combination with Friesen and Brooks.**

With regard to claims 41, 43 45, and 47 as amended March 13, 2003, Lee teaches a solid color-coded AC electrical power distribution system, said system comprising (Fig.):

a housing member (12) having a plurality of electrical outlets (16a-16h) for connecting electrical power to a plurality of peripheral devices (e.g., 2:52-55 3:24-32),

said housing member having a plurality of color-assignable areas (Fig.),

each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices (e.g., 2:52-55, 3:33-4:6).

Lee does not explicitly teach a plurality of attachable color-coded labels as intended by Applicant. However Friesen teaches a plurality of color coded labels (e.g., abstract). One would have been motivated to modify Lee with the colored coded labels

for attaching to the color assignable areas as taught by Friesen because Friesen recognized that many connectors and cables look substantially the same (1:63-64) and solved the problem by color coding each receptacle to match the color-assignable area of the peripheral to facilitate connection of the peripheral (e.g., abstract, 2:32, 41-59, 3:28-32, 4:36-54).

Brooks teaches that it is known to relabel a device (as claimed by Applicant) if you want to change the existing layout. One of ordinary skill in the art at the time the invention was made would have been motivated to relabel Lee's outlets with the suggestion *and* teaching of Brooks for the purpose of rearranging an existing pattern by yourself (Brooks, ¶ 1).

With regard to claims 42, 44, 46, and 48, adding the feature of the colored labels further including indicia for identifying which peripheral has been assigned a new color. Friesen teaches one or more adhesive strips each also have a commonly used icon for identifying the peripheral device whose plug is designed to connect with the external port adjacent to which the adhesive strip has been attached (abstract).

One of ordinary skill in the art at the time of the invention would have been motivated to modify Lee to include indicia as taught by Friesen for the purpose of further assisting a user to identify the peripheral associated with the ports (4:67-5:2).

### ***Response to Declarations***

The examiner has re-considered the Declarations under 37 C.F.R. §§ 1.131(a) and 1.132.

7. The declaration filed by Applicant on December 12, 2000 under 37 CFR 1.131(a) has been re-reconsidered but is ineffective to overcome the current 102(e) reference's.

The examiner notes that, applicant makes unsupported conclusory statements which are not facts. For example, applicant states that the claimed invention was first conceived in May 1993. As previously indicated (see office action dated March 27, 2001), there is insufficient evidence to support this assertion. To date, applicant has not provided any notes, sketches or drawings pertaining to the *claimed invention* (i.e., color-coded labels, and reassignment of the color-assignable areas) to conclusively antedate any proposed art. Applicant is reminded that conception is the mental part of the inventive act, but it must be capable of proof, as by drawings, complete disclosure to another person, etc. MPEP § 715.07. Absent any proof, the examiner finds the declaration to be ineffective.

Furthermore, the invention as described in Applicant's declaration in November 2000 is not what is presently being claimed. For example, Applicant amended the claims in September 2002 to recite re-assignment of color-assignable areas. This feature was never disclosed in Applicant's own declaration.

8. The declarations under 37 CFR 1.132 filed December 12, 2000 are insufficient to overcome the rejection set fourth below.

Applicant filed a 1.132, declaration which purportedly contains retail sales figures and market share data. In re-reconsidering the figures and data, the examiner has determined that there is no nexus between the newly claim invention and the figures. In making this determination, the examiner has researched Monster Cable Products, Inc.

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model numbers as disclosed in the declaration on Applicant's web site as far back as 1998. There is no evidence to suggest any re-assignment of color-assignable areas whatsoever. Therefore, since the examiner cannot find that the purported total sales relates to the claimed invention, the finding that Applicant's 1.132 declaration is insufficient as it relates to proof of commercial success is proper. (There must be a *nexus* between the claimed invention and the sales. The term "nexus" designates a factually and legally sufficient connection between the evidence of commercial success and the claimed invention so that the evidence is of probative value in the determination of nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7USPQ2d 1222 (Fed. Cir. 1988)).

In considering evidence of commercial success, care should be taken to determine that the commercial success alleged is directly derived from the invention claimed, in a marketplace where the consumer is free to choose on the basis of objective principles, and that such success is not the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to applicant or assignee, or other business events extraneous to the merits of the claimed invention, etc. *In re Mageli*, 470, F.2d 1380, 176 USPQ 305 (CCPA 1973).

In the present case, Applicant declares that Good Guys® has completely discontinued sales of the competitor's plug strip and are exclusively carrying only Applicant's claimed invention. Further a sales analysis report, (of wholesale to all dealers) is insufficient to show, the exact market in which the claimed invention was sold, whether the claimed invention was sold on its own merits, or to loyal customers

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who like Monster Cable products. Additionally, the report is inconclusive as to whether the consumers were free to choose between Monster Cable and its competitors, or if the reported dealers, similar to Good Guys® and Sound Advice®, **only** sold Applicant's color-coded power strip. Other considerations, which cannot be gleaned from the report are whether older products were discontinued, leaving consumers to purchase the new product(s). Furthermore, it has been held that [g]ross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v Genmark, Inc.*, 770 F.2d 1015, 22 USPQ 881 (Fed. Cir. 1985), or as to the time prior during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988).

In re-considering the 1.132 declarations, declaring that there was a long felt need for the claimed invention, the examiner finds that they to are insufficient. The Court opined that establishing a long felt need requires objective evidenced that an art recognized problem existed in the art for a long period of time without a solution. The relevance of long-felt need and the failure of other to the issue of obviousness depends on several factors. First the need must have been a persistent one that was recognized by those of ordinary skill in the art *In re Gershon*, 372 F.2d 535, 539, USPQ 602,605 (CCPA 1967); second, the long-felt need must not have been satisfied by another before the invention by applicant. See *Newell Companies, Inc. v. Kenney Manufacturing Co.*, 864 F.2d 757, 768, 9 USPQ2d 1417, 1426 (Fed. Cir. 1988); Finally, it must appear that the inventor's solution in fact satisfied the long-felt need, that is, reached a result superior to prior solutions.

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In the present case, declarants contend that retail consumers have been stymied by peripheral device connection confusion imparted by plain power strip plugs (see declaration of Noel Lee and Karen Johnson). However, there is no objective evidence to support that others have recognized the problem tried to find a solution, and failed. In fact others have recognized the problem as evidenced by Friesen, US 6,496,884.

Notwithstanding that issue, the examiner notes that applicant has not declared that there has been a long felt need for *re-assigning color assignable areas*. However, if applicant now declares this feature to be a long felt need. This statement too will most likely be insufficient due to lack of objective evidence, which is also supported by the dicta in *Orthopedic Equip. Co., Inc. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 217 USPQ 1281 (Fed. Cir. 1983) ("Since the alleged problem in this case was first recognized by appellants, and others have not yet become aware of its existence, it goes without saying that there could not possibly any evidence of a long felt need in the . . . art for a solution to a problem of dubious existence or failure of others skilled in the art who unsuccessfully attempted to solve a problem which they were not aware.")

In re-reconsidering the 1.132 declaration, intending to show support of secondary considerations, i.e. unique human factor, the examiner finds that the applicant has failed to provide adequate support that the opinion of Dr. Albert Mahrabian relates to the currently claimed invention. Dr. Mahrabian, declares in conclusion that "A solid color-coded device having peripheral device identification, constitutes a solid color image which requires far less mental processing than required by the cited art . . ." (see Dr. Albert Mehrabian's declaration under 37 C.F.R. 1.132, conclusion, page 6). Clearly Dr.

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Mehrabian cannot be referring to the Friesen reference, because Friesen clearly teaches a solid color-coded device having peripheral device identification . . .

Furthermore, the declaration dated November 2000, was filed prior to the newly claimed feature of re-assigning color assignable areas. Since Dr. Mehrabian did not offer an opinion **relevant** to the claimed invention his declaration is not probative.

***Pertinent Prior Art***

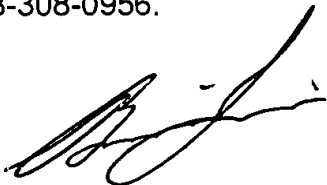
9. The following art is highly relevant to color-coding devices with stickers, and or arbitrarily re-labeling, re-assigning, re-defining existing devices. Harwood, G. PC Concepts makes computer system setups a snap with the introduction of new color-coded cables. Holton Home Page and Fentek Industries, Inc. Keyboard Products disclose color-coded label sets and labels.

***Communication with the PTO***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Polk whose telephone number is 703-308-6257. The examiner can normally be reached on M-F 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 703-308-3119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9318. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

sp



BRIAN SIRCUS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800